

## **REMARKS**

### **I. GENERAL**

Claims 26 and 29-39 are pending in this application, claim 34 is withdrawn and claims 26, 29-33 and 35-39 are rejected. The issues raised in the Non-Final Office Action of July 1, 2011 ("Current Action") are as follows:

- Claim 29 is rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.
- Claims 26, 29-32, 35 and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,167,752 issued to Lin-Hendel (hereinafter "Lin-Hendel") and in further view of U.S. Patent No. 6,567,696 issued to Voznesensky et al (hereinafter "Voznesensky").
- Claim 33 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin-Hendel and Voznesensky as applied to claim 29 above, and in further view of U.S. Patent No. 5,891,182 issued to Fleming (hereinafter "Fleming").
- Claims 37 and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin-Hendel and Voznesensky as applied to claim 36 above, and in further view of U.S. Patent Publication No. 2002/0099412 issued to Fischell (hereinafter "Fischell").
- Claim 39 is rejected as being unpatentable over Lin-Hendel and Voznesensky as applied to claim 35 above and in further view of U.S. Patent No. 4,982,742 issued to Claude (hereinafter "Claude").

### **II. AMENDMENTS**

Claim 29 has been amended to recite, "a control unit for passing alternating current between the electrodes to the treatment area between the electrodes . . . ." Support for this amendment to claim 29 may be found at least at claim 1 and page 13, lines 8 – 13 of the originally filed application. Claim 29 has also been amended to remove "and concurrently". Claims 49 – 52 are new. Support for new claim 49 may be found at least at page 10, lines 15 – 18 of the originally filed application. Support for new claim 50 may be found at least at page 11, lines 1 – 5 of the originally filed application. Support for new claims 51 and 52 may

be found at least at page 11, lines 1 – 5 and 17 – 22 of the originally filed application. No new matter has been added by these amendments.

### **III. CLAIM REJECTIONS**

#### **A. 35 U.S.C. § 112 Rejection**

Claim 29 has been rejected as not complying with the written description. Applicant disagrees with the Examiner's rejection; nonetheless, in order to reduce the issues for further prosecution of this application, Applicant has amended claim 29 to remove the limitation the Examiner alleges is not supported in the specification. Accordingly, Applicant respectfully request that the Examiner withdraw the rejection, under 35 U.S.C. § 112, of claim 29.

#### **B. 35 U.S.C. § 103 Rejections**

Claims 26, 29-33 and 35-39 have been rejected as being obvious. The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. M.P.E.P. § 2142; *In re Peehs*, 612 F.2d 1287, 204 USPQ 835, 837 (CCPA 1980). In an obviousness rejection, “[u]nder § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.” *Graham v. John Deere Co.*, 383 U.S. 1, 15 - 17 (1966). With regard to the claims rejected under 35 U.S.C. § 103(a) in the current application, the Office Action does not show that the rejected claims are obvious under the framework set out in *Graham*. Applicant respectfully traverses the Examiner's rejection of the claims for the reasons discussed below.

##### **1. 35 U.S.C. § 103 Rejection over Lin-Hendel and in further view of Voznesensky**

Claims 26, 29-32, 35 and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin-Hendel and in further view of Voznesensky. Lin-Hendel in view of Voznesensky, however, does not teach limitations of the claims.

##### **a. Claim 29**

Claim 29 recites, “a dressing having a treatment surface for applying to a treatment area of said damaged tissue . . . .” The Examiner relies on Lin-Hendel, col. 4, lines 59 – 62

and col. 5, lines 4 – 8 for teaching this limitation of claim 29. The Examiner, however, has failed to show that Lin-Hendel teaches this limitation.

The Examiner has erred in asserting that Lin-Hendel's conductive gel-pads are dressings. *See* Office Action, page 3. According to the Examiner, the conductive gel-pads are dressings because Lin-Hendel col. 4, lines 59 – 62 teaches that “the conductive gel pads are placed on skin areas above a set of Acu-points or other points that treat certain undesirable health conditions and/or help obtain desirable health conditions . . . .” Office Action page 9. The Examiner then concludes, “since the conductive gel pads are placed on skin area above points that treat undesirable health conditions, they would provide a protecting function to a damaged tissue.” *Id.* In effect, the Examiner is asserting that anything that is placed on the skin above a point related to the treatment of certain health conditions protects underlying damaged tissue and is therefore a dressing. Applicant respectfully disagrees.

The Examiner's conclusion reflects a misunderstanding of how the Lin-Hendel device operates and Lin-Hendel's mode of treatment. The Lin-Hendel device is for performing acupuncture treatment. As is well known, acupuncture treatment involves identification and manipulation of an acupuncture point which is remote from a condition that is to be treated. Lin-Hendel's mode of treatment is to apply the conductive gel pads to skin at locations which are generally remote from the ailment that is treated. Significantly, the treatment in Lin-Hendel is not for “damaged” tissue in the sense that trauma has caused acute wounding to tissue that is covered with a dressing; the ailments disclosed in Lin-Hendel do not concern damaged tissue as such, rather there are references to ailments such as insomnia, common cold, stress induced teeth, constipation, hemorrhoid and diabetes. *See e.g.*, Figures 4A to 4C. The insomnia, common cold, stress induced teeth, constipation, hemorrhoid and diabetes health conditions are treated by applying the conductive gel-pads to points remote from these health conditions. In other words, a conductive gel-pad applied to the skin of certain area is not a dressing for that area. Indeed, the conductive gel-pads could not be dressings because, as one of ordinary skill in the art would recognize, health conditions such as insomnia, common cold, stress-induced teeth, constipation, hemorrhoid and diabetes are not treated by the use of dressings.

The device of claim 29 includes a dressing for placing over a treatment area of damaged tissue (normally open wounds and the like)<sup>1</sup> and electrical treatment is performed directly to a treatment area of the damaged tissue via electrodes located on the treatment surface of the dressing. The device of claim 29 is used for treating damaged tissue, such as open or closed wounds by the electrodes on a dressing and the tissue to be treated. Lin-Hendel's acupuncture treatment does not disclose these features. Therefore, the Examiner's reliance on the disclosure that Lin-Hendel's gel-pads are placed above certain areas associated with treatment of certain health conditions to assert that the gel-pads are dressings is misplaced.

Moreover, the Examiner is not reading "a dressing" as one of ordinary skill in the art would. "During examination . . . claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) *citing In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990). Applicant submits that one of ordinary skill in the art would not interpret a conductive gel pad as disclosed by Lin-Hendel as a dressing merely because it is placed at certain points on the skin. Paragraphs [0007], [0103] and [0104] of the current specification and Figs. 2A and 2B, provide disclosure of examples of a dressing. Paragraph [0007], for example, provides that "Dressings for promoting tissue repair have been known for many years. These dressings are coated with substances which are absorbed into the damaged tissue and actively encourage cellular regeneration and prevent infection." Further, a dressing is well known to be protective material that is applied to a wound or to tissue that has been damaged through trauma (e.g., a gauze-type dressing applied to open wounds or burns, or a bandage applied to tissue surrounding an injured muscle, ligament or tendon). Indeed, if one were to rely on a dictionary definition, a dressing is "therapeutic or protective material applied to a wound." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 546 (4th ed. 2006) (attached hereto in Evidence Appendix A). Contrary to the assertions by the Examiner, Lin-Hendel's conductive gel-pads do not provide protection to a wound or to tissue that has been damaged through trauma. Further, Lin-Hendel does not teach that its gel pad is therapeutic to a wound. Considering the disclosures in the current specification, knowledge in the art and

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<sup>1</sup> Damaged tissue is described in the application, page 1, lines 12 – 14 as being tissue which is subject to damage including: "non-complicated acute wounding, complicated chronic wounding, trauma, exercise related trauma and pathological damage." Furthermore, repair of damaged tissue involves regeneration of tissue cells. See application, page 1, lines 22 – 26.

extrinsic evidence such as dictionary meanings, one of ordinary skill in the art would not conclude that Lin-Hendel's conductive gel-pads are dressings.

As discussed above, the Examiner has not shown that Lin-Hendel in view of Voznesensky meets the limitations of claim 29. Applicant, however, has amended claim 29 to help make the distinctions between the claims and the applied art references clearer in order to expedite the prosecution of this application. Claim 29, as amended, recites "a control unit for passing alternating current between the electrodes to the treatment area between the electrodes . . . ." The Examiner relies on col. 4, lines 54 – 64 for teaching the control unit for passing alternating current to the treatment area via the electrodes. Office Action, page 4. However, Lin-Hendel does not teach that the treatment area is located between the electrodes. With respect to claim 29, the damaged tissue between the electrodes is treated directly by the current which passes across the treatment area from one electrode to the other. In the device of Lin-Hendel, the treatment of ailments via "Acu-points" which are remote from the ailment location means that the ailment itself is not treated directly by the alternating current passing between the electrodes. This is because the alternating current does not pass through the treatment area of damaged tissue underlying the dressing on which the electrodes are mounted. Thus, Lin-Hendel does not teach the limitation requiring "a control unit for passing alternating current between the electrodes to the treatment area between the electrodes . . . ." At least for this reason, Lin-Hendel in view of Voznesensky does not render claim 29 obvious.

The Examiner concedes that "Lin-Hendel does not teach that the pair of electrodes are affixed on said treatment surface of the dressing . . . ." Office Action, page 4. Consequently, the Examiner relies on Voznesensky to teach this limitation. According to the Examiner, "Voznesensky et al teaches a device (Figure 3), wherein a pair of electrodes (electrodes [18]) are both affixed on a treatment surface of a dressing (heat transfer area [16] with dielectric layers [20]) and imbedded in the dressing." Office Action, page 4. Here, the Examiner improperly asserts that heat transfer area [16] is a dressing. Aside from the fact that the gel pad of Lin-Hendel is not a dressing, the physiotherapeutic device of Voznesensky is also not a dressing. Indeed, there is no disclosure in Voznesensky that reasonably suggests to one of ordinary skill in the art that heat transfer area [16] is a dressing. The Examiner's assertion that heat transfer area [16] of Voznesensky is a dressing is improper hindsight reconstruction. Such hindsight reconstruction does not show that Lin-Hendel in view of Voznesensky renders

claim 29 obvious. Moreover, the electrodes disclosed in Voznesensky would not be mountable on the outside of the gel pads of Lin-Hendel

In view of the above, Lin-Hendel in view of Voznesensky does not render claim 29 obvious. Accordingly, Applicant respectfully requests the withdrawal of the 35 U.S.C. § 103(a) rejection of claim 29.

b. Dependent claims 26, 30-32, 35 and 36

Dependent claims 26, 30-32, 35 and 36 depend either directly or indirectly from independent claim 29, and thus inherit all of the limitations of claim 29. It is respectfully submitted that dependent claims 26, 30-32, 35 and 36 are patentable at least because of their dependence from independent claim 29 for the reasons discussed above.

Moreover, the dependent claims recite limitations that the Examiner has not shown to be taught by the cited art. Claim 26, for example, requires that “the control unit and the dressing are integrated with each other.” The Examiner relies on Lin-Hendel, Fig. 7 for teaching this limitation of claim 26. According to the Examiner, “Since, the control unit, outputs, and conductive gel pads are all connected to each other, it can be said that they form a single, integrated structure.” Office Action, page 10. Applicant submits that merely asserting that conductive gel pads are connectable to the asserted control unit does not show that Lin-Hendel teaches the limitation that “the control unit and the dressing are integrated with each other.” As such, the Examiner has not shown that Lin-Hendel describes all the limitations of claim 26.

In sum, the Examiner the Examiner has not shown that Lin-Hendel in view of Voznesensky renders claims 26, 30-32, 35 and 36 obvious. Accordingly, Applicant respectfully requests the withdrawal of the 35 U.S.C. § 103(a) rejection of claims 26, 30-32, 35 and 36.

**2. 35 U.S.C. § 103(a) Rejection over Lin-Hendel in view of Voznesensky and Fleming**

Claim 33 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin-Hendel and Voznesensky as applied to claim 29 above, and in further view of Fleming. As discussed above, Lin-Hendel in view of and Voznesensky does not teach all the limitations of claim 29. It is respectfully submitted that dependent claim 33 is allowable at least because of its

dependence from claim 29 for the reasons discussed above. Accordingly, Applicant respectfully requests the withdrawal of the 35 U.S.C. § 103(a) rejection of claim 33.

3. 35 U.S.C. § 103(a) Rejection over Lin-Hendel in view of and Voznesensky and Claude

Claim 39 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin-Hendel and Voznesensky, as applied to claim 35 above, and further in view of Claude. As discussed above, Lin-Hendel does not teach all the limitations of claim 29. It is respectfully submitted that dependent claim 39 is allowable at least because of its dependence from claim 29 for the reasons discussed above. Accordingly, Applicant respectfully requests the withdrawal of the 35 U.S.C. § 103(a) rejection of claim 39.

**IV. NEW CLAIMS**

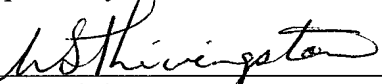
New claims 49 – 52 recite limitations with respect to the dressing. Applicant submits that the cited references do not render claims 49 – 52 obvious. Thus, Applicant respectfully requests that these claims be allowed.

**V. CONCLUSION**

In view of the above, applicant believes the pending application is in condition for allowance. The fee of \$635 set forth under 37 CFR 1.17(a)(3) for a three month extension for response for a small entity will be paid by credit card. Please charge any fees required or credit any overpayment during the pendency of this Application pursuant to 37 C.F.R. 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees to Deposit Account No. 06-2380, under Order No. 51407/P029US/10605267 from which the undersigned is authorized to draw.

Dated: December 22, 2011

Respectfully submitted,

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Attachment: Evidence Appendix A